

November 14, 2019

VIA ECFS

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services, WC Docket No. 19-308*

Dear Ms. Dortch:

On November 12, 2019, Sana Sheikh, Senior Corporate Counsel, Granite Telecommunications, LLC, and the undersigned met with Austin Bonner, legal advisor to Commissioner Geoffrey Starks. During the meeting, we explained that government customers continue to demand and rely on TDM-based telephone services delivered via copper loops in the many locations in which those services remain available. For example, in a recent filing by the National Weather Service (“NWS”), of the National Oceanic and Atmospheric Administration (“NOAA”),¹ NWS explained that it relies on copper-based services to perform critical functions, such as supporting NOAA Weather Radio, which provides nationwide weather warnings, watches, forecasts, and other hazard information, and supporting the Automated Surface Observing System, which is the Nation’s primary surface weather observing network for aviation.² Ms. Sheikh explained that many other government agencies are similarly reliant on copper-based telephone services to perform critical governmental functions. Since incumbent LECs have a monopoly over copper loop services, the only possible form of competition for these services is resale, and that is only possible if Avoided-Cost Resale applies. As Granite explained in the USTelecom forbearance petition proceeding, in 2017 it was approved as one of nine service providers under the General Service Administration’s Enterprise Infrastructure Solutions (“EIS”) contract to introduce competition, lower prices, and improved service quality for telecommunications services, including copper-based services, offered to federal government agencies. As an EIS vendor, Granite can bid on solicitations issued by federal government agencies; however, Granite, and other non-incumbent LEC EIS vendors, can only bid competitively if

¹ See Letter from Bernard Werwinski, Chief Network and Infrastructure Branch, Office of Dissemination, National Weather Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, to Marlene Dortch, WC Docket No. 19-238, Comp. Pol. File No. 1561 (Sept. 27, 2019).

² See *id.* at 2.

Avoided-Cost Resale applies to new orders before and after EIS takes full effect in 2023.³ Accordingly, we requested that the Commission expand the scope of the draft NPRM in the above-referenced proceeding to seek comment on whether the Commission should reverse its decision to forbear from Avoided-Cost Resale in Price Cap incumbent LEC territories and whether, alternatively, the Commission should modify its decision to establish a six-month transition for new orders and a three-year grandfathering period for prior orders.⁴ For convenience, we are filing herewith copies of the NWS/NOAA filing and the Granite filings cited herein.

Please contact the undersigned with questions or concerns about this submission.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

Counsel for Granite Telecommunications, LLC

Attachments

cc: Austin Bonner

³ See Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc. to Marlene Dortch, WC Docket No. 18-141, at 4-6 (July 15, 2019); Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc. to Marlene Dortch, WC Docket No. 18-141, at 5-6 (June 14, 2019). Of the nine approved EIS providers, only Granite and one other approved provider focus on offering copper-based telecommunications services in competition with the incumbent LECs. Given that incumbent LECs have a monopoly over copper loops, both of those providers rely on Avoided-Cost Resale in order to offer copper-based services.

⁴ See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next Generation Networks*, Memorandum Opinion and Order, 34 FCC Rcd 6503, ¶¶ 38-55 (2019).

ATTACHMENTS

September 27, 2019

Via FCC Electronic Comment Filing System

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Re: WC Docket No. 19-238, Comp. Pol. File No. 1561

Ms. Dortch:

In accordance with section 63.71 of the Federal Communication Commission (Commission) rules, the National Weather Service (NWS), of the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, hereby files its objection to the Section 214 Discontinuation Application made by AT&T Services, Inc., on behalf of its listed affiliates in WC Docket No. 19-238, Comp. Pol. File No. 1561 termination of certain copper-based telecommunications circuits as outlined in the application by AT&T Services, Inc. and posted in Public Notice DA-19-815 on 30 August 2019.

The National Weather Service (NWS) provides weather, water, and climate data, forecasts and warnings for the protection of life and property and the enhancement of the national economy. NOAA's mission is one of science, service, and stewardship. Service involves the communication of NOAA's research, data, information, and knowledge for use by the Nation's businesses, communities, and people in their daily lives. NOAA services include climate predictions and projections; weather and water reports, forecasts and warnings; nautical charts and navigational information; and the continuous delivery of a range of Earth observations and scientific data sets for use by public, private, and academic sectors.

The arbitrary deadlines in the proposal for the discontinuance of traditional copper-based service will have significant consequences for a U.S. Government agency dependent on annual appropriations to make necessary upgrades and changes. The NWS, as well as other components of NOAA, have diverse mission portfolios and a large number of facilities that depend upon existing phone lines to fulfill their statutory mandates. Agency plans to upgrade its communication links are dependent upon annual budget allocations for completion, and the agency is prohibited by federal law from committing to spend funds that are not appropriated. A discontinuance of copper-based service to any particular facility has significant potential to endanger life and property that the agency is required to protect. In addition, there are potentially severe implications for commercial activities that depend upon the data and products NOAA generates and disseminates.

For the reasons explained below, because of the severe implications and uncertainty regarding the agency's ability to fulfill its mission to protect life and property and enhance the national

economy, the proposed discontinuance will adversely impact the public convenience and necessity. In addition, absent the ability to continue traditional copper-based service until such time as the agency is able to adapt its various communication systems to maintain its operations with digital lines and receivers, the agency must conclude that it will not be able to receive service or a reasonable substitute from another carrier in all instances that its mission requires, thus endangering life and property and having potential ramifications for the Nation's economy.

NEED FOR CONTINUATION OF SERVICE

The NWS requests that the FCC delay the termination of these circuits, including the discontinuance of renewed service agreements and responses to requests for physical changes to existing service until the end of the Federal Government Fiscal Year 2025. The reasons are outlined below, but the overriding concern is that the termination of these circuits will negatively impact the NWS mission to preserve life and property and enhance the Nation's economy, as well as the overall NOAA mission to provide a host of services to the Nation. Some specific examples include:

- **NOAA Weather Radio (NWR).** NWR is a nationwide network of over 1,000 radio transmitters broadcasting official NWS warnings, watches, forecasts and other hazard information 24 hours a day, 7 days a week to all 50 states, adjacent coastal waters, Puerto Rico, the U.S. Virgin Islands, and the U.S. Pacific Territories. NWR is also monitored by broadcasters for Emergency Alert System (EAS) activation. NWR requires analog circuits to function and maintain broadcast capability. There are 1572 analog circuits* associated with NWR. If analog circuits are turned off before the transition to newer technology, NWR coverage and availability would be significantly reduced, resulting in increased risk for loss of life and property. Ability to provide EAS activation for weather events would also be negatively impacted.
- **Automated Surface Observing System (ASOS).** The ASOS program is a joint effort of the NWS, the Federal Aviation Administration (FAA), and the Department of Defense (DOD). The ASOS systems serves as the Nation's primary surface weather observing network for support to the aviation community. ASOS provides weather observations required by aviation for take-off and landing operations at airports. The systems also support issuance of weather forecasts and timely issuance of warnings and advisories and, at the same time, supports the needs of the meteorological, hydrological, and climatological research communities. Termination of the 16 (AT&T) (372 total) analog circuits** identified in this specific application would impact safety and operation of the National Air Space, including potential shutdown of parts of the National Airspace. Analog lines also support remote maintenance operations and would affect availability of the data when the equipment is not operating.
- **Next Generation Weather Radar (NEXRAD).** NEXRAD is a network of 159 high-resolution S-band Doppler weather radars jointly operated by the NWS, FAA, and the U.S. Air Force. NEXRAD is the most important severe storm observation tool used by the NWS

to acquire information about tornadoes and severe storms (storms containing damaging winds, hail, turbulence, heavy rain/flooding and lightning). NEXRAD data are integrated into America's decision support serving air traffic management, military operations, emergency management, and enhancing commerce through safe air and surface transportation, improved water management, agriculture and forest management, and snow removal management, which are crucial for a Weather-Ready Nation. There are 41 AT&T analog circuits impacted by the current application, and potentially 102 total analog circuits nationwide that could be impacted by future applications by other carriers.** If these NEXRAD circuits are terminated, then National public safety is at heightened risk. The availability of radar data is potentially decreased due to loss of remote maintenance capability and diminished troubleshooting capability. Regional (multi-radar) and/or extended radar outages in metropolitan areas vastly increase the risk for loss of life and property, as well as the risk of significant economic impacts.

The NWS Primary Mission Essential Functions, which support the NOAA Primary Essential Functions, are:

1. Ingest, encode, collect, and distribute surface, upper air, space-based, and electro-magnetic observations;
2. Generate forecasts; and
3. Issue watches, warnings, and advisories of severe weather and other hydro-meteorological and electromagnetic events.

NWR, NEXRAD, and ASOS all fall within these criteria. Access to operational phone lines is crucial to the operation and maintenance of these systems.

BACKGROUND

NOAA Weather Radio (NWR) – Dedicated Analog Circuits from Weather Forecast Offices (WFO) to Transmitter sites and Dial-up Plain Old Telephone Service (POTS) maintenance circuits at Transmitters.

- 762 dedicated analog circuits for the primary broadcast audio feed are provisioned under the GSA Networx contract.
- 810 other circuits for the remaining primary broadcast audio feed & Remote Off-Air Monitoring Systems (ROAMS) monitor & control (including diagnostics) are locally procured directly from vendors and are not provisioned under the GSA Networx contract.
- Discontinuation of these circuits as early as August 2020 would force NWS to migrate analog feed to alternate higher cost solutions or to terminate broadcasting.
- Loss of circuits would disable primary broadcast audio feed and the current maintenance reporting service capabilities used to sustain high availability of service.
- Inadequate resources and budget to make alternate technology transitions within the announced timeline.

- Alternate solutions using fiber or network connections are cost-prohibitive and are not supported under current budgets.
- Evaluation and testing are underway by the NWS to evaluate the replacement of analog circuits with wireless devices (2 to 3 fold cost increase).
- Replacing the analog circuits with wireless has moderate risk and requires site-by-site testing, and will necessitate an initial investment in IT hardware.
- Resources to perform hardware deployment and performance verification will require funding increases above the current budget.

Automated Surface Observing System (ASOS) -- 16 (AT&T) (372 total) dedicated Analog Circuits from supporting ASOS sites are not provisioned under the GSA Network contract.

- Provides up-to-the-minute weather observations to support the National Air Space, which will be affected if circuits are terminated with no viable alternative.
- Serves as reporting stations for aviation by generating required Meteorological Aerodrome Report (METAR) and Meteorological Aerodrome Report Special (SPECI) weather observations used by participants in active runway airport operations and generating the daily and monthly authoritative climate reports.
- Provides weather observations to support issuance of weather warning and advisories, as well as support emergency services, insurance, and risk assessments, utility operations, transportation, and other business-related activities for both real-time and historic capacities.
- Investigating alternative communications solutions expected to be ready in FY23 at the earliest.

(Next Generation Weather Radar) NEXRAD -- 41 (AT&T) (102 total) dedicated Analog Circuits supporting NEXRAD radar sites are not provisioned under the GSA Network contract.

- NEXRAD is the NWS' #1 observational system for making threshold decisions during severe storm advisory and warning operations underpinning weather forecast services nationwide.
- The NEXRAD operational availability standard is 96% (percentage of time the system is providing data to forecast services) established in the NWS Modernization Act of 1992 by Congress. This standard is not possible without timely and reliable communication between the system and the forecast offices of the FAA NWS, and DoD.
- Loss of these circuits will negatively impact data availability increasing the likelihood of extended radar outages. These would potentially impact neighboring radar systems resulting in large-scale "regional" outages, thus eliminating the overlap of coverage designed to minimize single-station outages.
- Loss of these circuits will impact NEXRAD electronic technician personal safety and remote maintenance capabilities.
- The circuits are installed at the most remote of radar locations for emergencies, e.g. electrical shock, climbing incident, etc. Some radars are several hours away from a hospital, away from emergency response services and outside cellular coverage.

- Loss of circuits prior to an alternative solution will compromise current maintenance practices vital to sustaining high availability of service impacting the availability of radar data. Electronic technicians will be isolated from troubleshooting assistance necessary for complex system outage situations, e.g., calls to WFO, NEXRAD Hotline.
- This situation also impacts contracted NEXRAD maintenance and repair services, e.g., tower/radome services, Service Life Extension Program (SLEP), etc..

CONCLUSION

In the interest of public safety and the protection of life and property, the FCC should deny the requested discontinuance of service until the NWS is able to update its infrastructure or arrange to receive service or a reasonable substitute from another carrier. NWS requests the phased discontinuation be delayed until such time as the NWS finds feasible technical solutions to replace the analog circuits beginning in FY21 and finishing in FY25.

Due to the large scale of the agency's geographically-dispersed infrastructure, the range of important services it provides to the Nation, and the short time in which a response is required, as well as the anticipated discontinuance of copper-based service by other providers, not all impacts have been uncovered or disclosed in this letter. Therefore, NWS requests the opportunity to meet with FCC staff to augment the record in support of its objection.

Sincerely,

/s/

Bernard Werwinski

Chief, Network and Infrastructure Branch

Office of Dissemination

National Weather Service

National Oceanic and Atmospheric Administration

U.S. Department of Commerce

* The NWS is currently working on identifying the exact numbers of circuits supporting NWR which are provisioned by AT&T, but we are including all circuits as we have received similar notices from other telecommunications companies indicating that they are pursuing similar measures.

** We specify the number of AT&T circuits as this is a response to an AT&T application, but we have received similar notices from other telecommunications companies indicating that they are pursuing similar measures.

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

July 15, 2019

VIA ECFS

NOTICE OF EX PARTE

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141*

Dear Ms. Dortch:

On July 11, 2019, Sana Sheikh, Senior Corporate Counsel of Granite Telecommunications, LLC (“Granite”), Joseph Farano, General Counsel, and Sean Sullivan, Vice President, Product Management and Regulatory Affairs, of Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), Joel Miller, General Counsel of Access One, Inc. (together with Granite and MetTel, the “Joint Parties”), and Karen Reidy, Vice President of Regulatory Affairs of INCOMPAS, as well as Mia Guizzetti Hayes and the undersigned of Willkie Farr & Gallagher LLP, participated in separate meetings with Jamie Susskind, Chief of Staff and Wireline Advisor to Commissioner Carr, and Andrew Magloughlin, intern in Commissioner Carr’s office; Arielle Roth, Wireline Advisor to Commissioner O’Rielly; Travis Litman, Chief of Staff and Wireline Advisor to Commissioner Rosenworcel; and Randy Clarke, Wireline Advisor to Commissioner Starks. During the meetings, the Joint Parties’ representatives explained that the Commission should deny forbearance for avoided-cost resale of TDM-based telephone services provided via copper loops (“traditional TDM service”) and voice-grade copper loop unbundled network elements (“VGCL UNEs”). We further explained that if the Commission grants forbearance for resale and VGCL UNEs, the order should not take effect for five years and three years for existing lines serving government and business customers, respectively, and the order should not take effect for four years and 18 months for newly-ordered lines serving government and business customers, respectively. Following is a description of the arguments we made in support of these assertions.

First, we explained that retaining avoided-cost resale would not slow the transition to IP voice services or the deployment of fiber loop facilities. The avoided-cost discount merely requires that the

wholesale discount equals the amount the ILECs save when selling to wholesale customers rather than retail customers.¹ If the costs associated with maintaining copper loop plant increase, the ILECs remain free to increase their retail prices for traditional TDM service, and the avoided-cost discount would simply apply to those higher underlying retail prices. The ILECs are also free to retire their copper loops at any time, as long as they comply with the relevant Commission rules, and the avoided-cost discount in no way affects this right. Such retirement operates as a form of unilateral forbearance because the elimination of copper eliminates traditional TDM service. The ILECs are also free to seek to discontinue traditional TDM service at any time, thereby effectively eliminating avoided-cost resale entirely since that requirement does not apply to VoIP. Again, application of the avoided-cost discount does not affect this right. If anything, the presence of competitors selling traditional TDM service would seem to accelerate the transition to VoIP and fiber since the ILECs have an extra incentive to eliminate competition made possible by avoided-cost resale. All of this supports the conclusion reached by the Joint Parties' economic expert in this proceeding that "[t]here is . . . no adverse impact on [ILECs'] ability to gain profits or to invest in the construction of new networks or the provision of new services."²

Second, Mr. Sullivan and Mr. Miller explained why business and government customers demand traditional TDM service and do not view other telephone services, including IP-based services, as substitutes. To begin with, and contrary to CenturyLink's and AT&T's assertions,³ IP-based services are not as reliable as TDM-based services. This is so because IP-based services are not line-powered and have more points of potential failure than traditional TDM service. For example, an IP-based service fails when there is a power outage unless the customer has a battery backup. Moreover, in the Joint Parties' experience, commercially-available battery backups provide only a short-term power source, usually several hours.⁴ In contrast, traditional TDM lines are powered by the

¹ See 47 U.S.C. § 251(c)(4); 47 C.F.R. § 51.609.

² See Declaration of William P. Zarakas ¶¶ 22-23 & nn.12-13 (Aug. 6, 2018) ("Zarakas Decl."), attached as Attachment B to Opposition of Granite to USTelecom's Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018) ("Granite Opp.").

³ See Letter from Craig J. Brown, Assistant General Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4-6 (July 1, 2019); Letter from Christopher T. Shenk, Counsel for AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 2-3 (June 26, 2019).

⁴ AT&T's reliance on the *2017 Technology Transitions Order* is misplaced. That order found that the Commission's 911 backup power requirements were sufficient to protect *residential* customers, not business or government customers, in the event of a power outage. See *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, Declaratory Ruling, And Further Notice of Proposed Rulemaking, 32 FCC Rcd. 11128, ¶ 46 (2017) ("*2017 Technology Transitions Order*"). In its 911 backup power order, the Commission required providers of non-line-powered residential voice service to make available "at the subscriber's option and expense, a backup power solution that provides 911 access for 8 hours in the event of commercial power loss[, and] [w]ithin three years, . . . a 24-hour backup power solution." See *Ensuring Continuity*

ILECs' central offices, which are equipped with battery backup powered by generators that have the ability to run indefinitely, thus ensuring continuity of service. As a result, VoIP quickly becomes unavailable in the event of an extended power outage, as was the case during Superstorm Sandy, whereas traditional TDM service continues to work. It is for reasons like this that business and government customers continue to purchase traditional TDM service. Notably, more than half of MetTel's customers that purchase VoIP service also purchase traditional TDM service, even at the same location, and they do so even though traditional TDM service is twice as expensive as VoIP service.

Mr. Sullivan also explained that competitors like the Joint Parties deliver value to government and business customers through their "one stop shop" business model. Business and government customers, many of which have thousands of locations throughout the country, rely on the Joint Parties for all of their telecom needs. Those customers, which include more than 80 of the Fortune 100 companies, value the fact that the Joint Parties serve as a single point of contact for ordering, provisioning, installation, maintenance, and billing. In the absence of the price-disciplining effects of the avoided-cost resale discount and VGCL UNEs, the Joint Parties could lose the ability to provide these services.⁵ The risk of such harm to the Joint Parties and their end-user customers is especially acute because many of the Joint Parties' commercial wholesale agreements will expire within the next calendar year, and the ILECs have provided no assurances that they will maintain rates that resemble current rates.

Third, Ms. Sheikh explained that, should the Commission grant forbearance for avoided-cost resale and VGCL UNEs, establishing transition periods of adequate duration before forbearance takes effect will be key to protecting the interests of government customers, American taxpayers, and business customers. Ms. Sheikh stated that five years is the minimum adequate transition period for federal government customers, with an overlapping four-year period during which new services can be ordered subject to the wholesale regulations at issue. And while the three-year transition period that

of 911 Communications, Report and Order, 30 FCC Rcd. 8677, ¶ 9 (2015). In any event, power outages caused by severe storms or natural disasters frequently exceed eight or 24 hours. Business and government customers are well aware of this fact and therefore purchase traditional TDM service where possible.

⁵ As the Joint Parties have explained, the continued availability of VGCL UNEs is extremely important to their ability to serve business and government customers in CenturyLink's ILEC region. This is because Granite's and MetTel's commercial wholesale agreements with CenturyLink provide an overall wholesale discount for traditional TDM service that is similar to the avoided-cost resale discount, and they do so by setting the price for the loop component of traditional TDM service to be equal to the price that CenturyLink charges for a VGCL UNE, and setting the price for the other components of the service (e.g., switching) at a commercially-negotiated level. See Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 3 (June 14, 2019) ("Joint Parties' June 14 Letter").

the Chairman has reportedly proposed⁶ is arguably the minimum adequate transition period for business customers, the concurrent period during which new services may be added should be 18 months.

Federal government customers. A significant transition period is crucial for federal government customers. For the past several years, the General Services Administration (“GSA”) has sought to promote competition and provide cost savings to government customers by awarding the Enterprise Infrastructures Solutions contract (“EIS”) to nine approved carriers, including Granite and MetTel.⁷ In contrast, EIS’s predecessor contract, Networx, was awarded to only three approved carriers, all of them ILECs: AT&T, Verizon, and CenturyLink. The smaller number of competitive options under Networx has resulted in higher prices for government customers than is likely to be the case under EIS. Given that avoided cost resale and VGCL UNEs are crucial to ensuring Granite’s and MetTel’s viability as competitors, forbearance from these requirements would undermine their ability to compete absent a sufficient transition.

EIS was originally scheduled to take effect in May 2017, but GSA has postponed the mandatory transition date for government agencies until May 2023.⁸ As a result, most federal government customers have not begun to purchase services under EIS. In the two years since the award of EIS, of the expected 150 requests for proposals (“RFPs”) from federal agencies, fewer than 30 have been issued, and fewer than five have been awarded. Given the slow pace of the transition and government agencies’ general reluctance to begin to purchase services under EIS, it seems likely that many government agencies will not begin to order services under EIS until near the deadline in May 2023.

If avoided-cost resale and VGCL UNE requirements have been eliminated before then, ILECs will almost certainly have significantly increased the prices they charge Granite and MetTel for wholesale TDM telephone services. This will undermine the competitors’ ability to function as viable competitive options for government agency customers. Granite and MetTel will be forced either to respond to government agency RFPs with prices that are near or below their operating costs in the hopes that GSA will agree to price increases in the future or to forgo responding to government RFPs. Either way, government agencies will be harmed because Granite and MetTel will be weakened or eliminated as the only viable alternatives to the ILECs for TDM telephone services.

⁶ See *Pai Circulates Draft Voice Forbearance Order After USTelecom Narrows Request*, Communications Daily, at 12-13 (July 3, 2019).

⁷ See GSA, EIS Fact Sheet, at 1 (Aug. 1, 2017), https://www.gsa.gov/cdnstatic/EIS_Fact_Sheet.docx.

⁸ See Alan Thomas, *Extending Current Telecommunications Contracts To Allow For Successful EIS Transition*, GSABlog (Dec. 6, 2018), <https://www.gsa.gov/blog/2018/12/06/Extending-Current-Telecommunications-Contracts-To-Allow-For-Successful-EIS-Transition>.

In the end, taxpayers will incur the loss, and it is likely to be significant. According to GSA, EIS offers a 21 percent savings for the same services purchased under the current Networkx contract.⁹ These savings are in significant part due to the larger number of competitive options available under EIS. But if Granite and MetTel are no longer viable competitors in the provision of TDM telephone services, the number of providers of TDM telephone services would be the same as under Networkx, and it is likely that federal government customers would not receive the potential cost savings that result from a competitive bidding process. This is because the elimination of Granite and MetTel will decrease the number of competitors that have the ability to provide traditional TDM service, thereby allowing ILECs to charge their ceiling prices rather than encouraging the pool of competitors to offer rates below their ceiling prices. This is especially the case in instances where federal government agencies issue regional RFPs, and the ILECs are the only competitors in those regions. Because Granite and MetTel offer traditional TDM service on a nationwide basis, they offer competitive options in the ILECs' regions, hence driving down the prices available to federal government customers.

Furthermore, as the Joint Parties have explained, federal government agencies continue to purchase a large volume of traditional TDM service for critical infrastructure and functionalities, and many federal agencies are unlikely to transition from traditional TDM service to VoIP in the near future, even under EIS.¹⁰ As also explained, federal government customers disproportionately purchase lines directly governed by the avoided-cost resale discount (i.e., lines purchased under interconnection agreements) as compared to other enterprise customers, largely as a result of those federal government customers' remote and rural locations.¹¹ And even where the avoided-cost resale

⁹ See Crystal Philcox, *Achieving Modernization Through EIS* (May 22, 2018), <https://gsablogs.gsa.gov/technology/2018/05/22/achieving-it-modernization-through-eis/> ("Because of the consolidated buying power we have under GSA contracts, we realized a savings with EIS prices that average 21 percent lower than our current contract, Networkx. That's real money that agencies can put back into application modernization or cloud migration.").

¹⁰ See, e.g., Letter from Thomas Jones, Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4-9 (Mar. 14, 2019) (describing the regulatory and practical reasons why numerous federal agencies, including the Federal Aviation Administration, Federal Bureau of Investigation, and Department of Defense currently demand traditional TDM service and will do so for the foreseeable future); Letter from David J. Redl, Assistant Secretary for Communications and Information, NTIA, to Ajit Pai, Chairman, FCC, WC Docket No. 17-84, at 2 (July 19, 2018) (describing the challenges the federal government faces in the transition to IP-based services, particularly in areas where service providers lack competitive pressure); Reply Comments of Granite, MetTel, and Access One, WC Docket No. 18-41, at 4-9 (May 28, 2019) (quantifying federal government agencies' current and future demand for traditional TDM service).

¹¹ See, e.g., Declaration of Larry Antonellis ¶ 24 (Aug. 6, 2018) ("Antonellis Decl."), attached as Attachment A to Granite Opp.; Declaration of Sean J. Sullivan ¶ 20, attached to Opposition of MetTel to USTelecom's Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018).

discount does not apply directly, the regulatory backstop provided by Section 251(c)(4) disciplines the prices that ILECs charge the Joint Parties in commercial wholesale agreements, which in turn enables the Joint Parties to offer competitive prices to their end-user customers, including federal government customers.¹² Thus, the higher quality adjusted prices that the ILECs will undoubtedly offer as a result of forbearance from the avoided-cost resale discount are likely to result in very large losses to taxpayers.

Ms. Sheikh explained that, in order to address these concerns, it would be appropriate for forbearance from the Section 251(c)(4) avoided-cost resale and VGCL UNE requirements, as they apply to federal government end-users, to take effect a minimum of five years from the effective date of the Commission's order granting forbearance. In addition, federal government customers should be given, at a minimum, four years to add new services, which would coincide with the May 2023 deadline for the transition from Networx to the EIS contract. While far from ideal, these transitions would at least enable Granite and MetTel to sustain the prices they submitted in 2016 during the early stages of their service relationships governed by EIS. For example, for a government customer that begins purchasing services under EIS around the time of the mandatory transition date in May 2023, the four-year transition for new orders would enable the competitors to order new lines for that customer with the protection of avoided-cost resale and VGCL UNEs, and the five-year transition for grandfathered orders would enable the competitors to maintain those prices for the first year of the customer relationship. The competitors would need to request approval for rate changes during this period in the hope that they can continue viable operations during the remainder of the EIS contract.

Business customers. Ms. Sheikh also explained that business customers typically purchase traditional TDM service under three-year contract terms, with the right to unilaterally extend the contract for up to an additional two years.¹³ Service providers generally have no ability to increase prices during either the initial three-year term or during the extension periods. The Joint Parties set the prices in their customer contracts based on the wholesale prices they have paid ILECs while avoided-cost resale and VGCL UNE requirements have been in place. As such, the Joint Parties believe that a three-year transition period for business customers is the minimum necessary for competitors to honor the terms and rates they have already committed to provide to their business customers.

As Ms. Sheikh explained, a concurrent period of 18 months during which customers may add new services subject to avoided-cost resale and VGCL UNE requirements is appropriate for business customers. Many business customers order large numbers of new service lines during the terms of their contracts as they open new locations, and as their service requirements increase at existing locations. The Joint Parties would likely need to offer newly-ordered services at a loss if, as seems highly likely, the wholesale prices they pay ILECs increase after forbearance takes effect. An 18-month transition for new service orders is the minimum necessary to enable the Joint Parties to keep the harmful effects of the resulting price squeezes at manageable levels under existing contracts.

¹² See, e.g., Granite Opp. at 26; Zarakas Decl. ¶¶ 22-23 & nn.12-13; Antonellis Decl. ¶ 37.

¹³ See Joint Parties' June 14 Letter at 4.

Finally, the longer the Joint Parties are able to sustain viable service arrangements for business customers, the more time those customers will have to adjust to the new environment. When ILECs increase wholesale prices, the Joint Parties may lose the ability to serve many locations. This will require that business customers purchase traditional TDM service directly from the ILECs in such newly-unserved areas. Absent a sufficient transition, business customers would be forced to rush through the process of procurement and negotiation with ILECs, a process that can take more than a year under normal circumstances. This is a daunting prospect given that many business customers purchase traditional TDM service in dozens of ILEC territories. Again, the longer the transition, the longer the Joint Parties will be able to serve business customers, and the longer such customers will have to transition to purchasing traditional TDM service directly from ILECs. A period of 18 months to add new services would allow competitors to honor existing contracts and to remain reliable and predictable resources for the additional services that business customers require as they design and execute transition plans necessitated by forbearance.

Please contact me if you have any questions regarding this submission.

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

*Counsel for Granite Telecommunications, LLC
Manhattan Telecommunications Corporation d/b/a
Metropolitan Telecommunications, and Access One, Inc.*

cc: Randy Clarke
Travis Litman
Arielle Roth
Jamie Susskind
Andrew Magloughlin

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

June 14, 2019

VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141

Dear Ms. Dortch:

Pursuant to the *Protective Order* in the above-captioned proceeding,¹ Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc. hereby submit for filing a redacted, public version of the enclosed ex parte. The Highly Confidential version of the ex parte has been filed by hand with the Office of the Secretary and will be made available for review pursuant to the terms of the *Protective Order*.

Please contact me if you have any questions regarding this submission.

¹ *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, Order, 33 FCC Rcd. 5290 (2018) (“*Protective Order*”).

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
June 14, 2019
Page 2

Respectfully submitted,

/s/ Thomas Jones
Thomas Jones

*Counsel for Granite Telecommunications, LLC
Manhattan Telecommunications Corporation d/b/a
Metropolitan Telecommunications, and Access One, Inc.*

Enclosure

cc: Terri Natoli
Michele Berlove
Edward Krachmer
Pamela Megna

WILLKIE FARR & GALLAGHER LLP

1875 K Street, N.W.
Washington, DC 20006-1238

Tel: 202 303 1000
Fax: 202 303 2000

June 14, 2019

VIA HAND DELIVERY AND ECFS

EX PARTE NOTICE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141

Dear Ms. Dortch:

On Wednesday June 12, 2019, the undersigned and Mia Guizzetti Hayes of Willkie Farr and Gallagher LLP, counsel for Granite Telecommunications, LLC (“Granite”), Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (“MetTel”), and Access One, Inc. (“Access One”) (together, the “Joint Parties”), spoke by phone with Terri Natoli and Michele Berlove of the Wireline Competition Bureau regarding (1) the manner in which competitive carriers rely on avoided-cost resale under Section 251(c)(4) to provide traditional TDM-based telephone services via copper loops (“traditional TDM service”) to business and government customers, and (2) the appropriate transition for avoided-cost resale if forbearance were granted.

1. Competitors’ Use of Avoided-Cost Resale

During the call, we explained that many business and government customers rely on traditional TDM service because of its unique characteristics, and they do not regard wireless or IP-based voice service as a substitute.¹ Demand for traditional TDM service therefore remains significant. For example, traditional TDM service is purchased by [BEGIN HCI] [END HCI] of Granite’s business and government customers, and [BEGIN HCI] [END HCI] of Granite’s lines are provided to business and government customers that require traditional TDM service at ten or

¹ See Declaration of William P. Zarakas (“Zarakas Decl.”) ¶ 14 (Aug. 6, 2018), attached as Attachment B to Opposition of Granite to US Telecom’s Forbearance Petition, WC Docket No. 18-141 (Aug. 6, 2018) (“Granite Opp.”) (observing that many business customers “are specifically seeking copper-based TDM service”); Granite Opp. at 16-21; Declaration of Larry Antonellis ¶¶ 9-27 (Aug. 6, 2018), attached as Attachment A to Granite Opp. (“Antonellis Decl.”); Opposition of MetTel, WC Docket No. 18-141, at 4-6 (Aug. 6, 2018) (“MetTel Opp.”); Declaration of Sean J. Sullivan ¶¶ 11-21, attached to MetTel Opp.; Reply Comments of Granite in Support of Motion for Summary Denial and Opposition, WC Docket No. 18-41, at 9-10 (Sept. 5, 2018).

Marlene H. Dortch
June 14, 2019
Page 2

more locations.² We also stated that customers frequently purchase both IP-based and traditional TDM service at a single location, which is further evidence that those services belong in separate product markets.³

We explained that approximately [BEGIN HCI] [END HCI] of traditional TDM voice lines provided by Granite are obtained pursuant to interconnection agreements with ILECs.⁴ Competitors typically purchase traditional TDM service under interconnection agreements directly governed by Section 251(c)(4) when ILECs refuse to offer traditional TDM in commercial wholesale agreements or when the pricing or features provided via avoided-cost resale are advantageous.⁵ Competitors also rely on the Section 251(c)(4) avoided-cost resale requirement as a protection against ILEC abuse of market power when negotiating the prices for traditional TDM service in commercially negotiated agreements with the ILECs.⁶ In both contexts, the avoided-cost resale requirement serves as a check on ILEC monopoly power by providing competitors with a regulatory backstop when ILECs demand supra-competitive prices.

In contrast, where avoided-cost resale is *not* available, competitors have no choice but to accede to ILECs' demands for supra-competitive prices. For example, as Granite has explained, when it has attempted to resell traditional TDM service to customers located in the service territories of ILECs that are not subject to Section 251(c)(4) as a result of the Section 251(f) rural ILEC exemption, [BEGIN HCI]

[END HCI]

Importantly, ILECs that are exempt from the application of Section 251(c)(4) are nevertheless subject to the duty under Section 251(b)(1) not to prohibit or impose unreasonable or discriminatory conditions or limits on the resale of telecommunications services.⁹ But Section 251(b)(1) does not require that ILECs reduce their prices by the costs they avoid by selling services at wholesale, places

² See Granite Opp. at 20.

³ See *id.* at 17; Antonellis Decl. ¶¶ 16-17, 19.

⁴ See Granite Opp. at 25; Antonellis Decl. ¶ 40.

⁵ See Granite Opp. at 25; Antonellis Decl. ¶ 40; Zarakas Decl. ¶¶ 21-29.

⁶ See Granite Opp. at 26; Antonellis Decl. ¶¶ 32-44; Zarakas Decl. ¶¶ 21-29.

⁷ See Granite Opp. at 27; Antonellis Decl. ¶ 38.

⁸ See Granite Opp. at 27; Antonellis Decl. ¶ 38.

⁹ See 47 U.S.C. § 251(b)(1).

Marlene H. Dortch
June 14, 2019
Page 3

the burden of demonstrating harm on the competitor, and provides only a *post hoc* enforcement mechanism, among other deficiencies. Granite's experience operating in territories served by ILECs that are subject to Section 251(b)(1) but not Section 251(c)(4) demonstrates that the former is not an effective safeguard against ILECs' abuse of market power.¹⁰

We also reiterated that the continued availability of UNE voice grade DS0 copper loops is extremely important to the Joint Parties' ability to serve business and government customers in CenturyLink's ILEC region. Granite's and MetTel's commercial wholesale agreements with CenturyLink provide an overall wholesale discount for traditional TDM service that is similar to the avoided-cost resale discount.¹¹ The agreements achieve this outcome by setting the price for the loop component of traditional TDM service to be equal to the price that CenturyLink charges for the DS0 voice grade copper loop purchased as a UNE, and setting the price for the other components of the service (e.g., switching) at a commercially-negotiated level.¹² We explained that elimination of UNE rate regulation for DS0 voice grade copper loops would increase the price the competitors pay for TDM lines they buy in CenturyLink's ILEC region.¹³ In fact, in discussions with Granite, CenturyLink has expressly reserved the right to increase the prices that it charges Granite for traditional TDM service if the Commission grants forbearance. CenturyLink would likely take the same approach with MetTel. As a result, the competitors' business and government customers in CenturyLink's ILEC region would face increased retail prices, and, because resale competitors are the only alternative to the ILEC in the provision of traditional TDM service, the benefits of competition would be diminished.¹⁴

Finally, we explained that, absent the regulatory backstop provided by the Section 251(c)(4) avoided-cost resale requirement, ILECs would raise the prices they charge for traditional TDM service made available in commercial wholesale agreements. Granite has explained that, were this to occur, [BEGIN HCI]

[END HCI] The record of this proceeding provides ample evidence to

¹⁰ See Granite Opp. at 29-31.

¹¹ See Letter from John Nakahata, Counsel for INCOMPAS, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 5 (June 3, 2019).

¹² See *id.*

¹³ See *id.*

¹⁴ See *id.* at 5-6.

¹⁵ See Antonellis Decl. ¶ 42.

Marlene H. Dortch
June 14, 2019
Page 4

conclude that if forbearance from Section 251(c)(4) were granted, other resale competitors, including MetTel and Access One, as well as their business and government customers, would suffer the same harms, to the ultimate detriment of competition and consumers.

2. Transition

During the call, we reiterated that the ILECs have provided no basis in the record for granting forbearance from the application of Section 251(c)(4) avoided-cost resale to traditional TDM service purchased by government and business customers. In fact, it is striking that, while the ILECs have made some (albeit unmeritorious) attempts to support forbearance for unbundled network elements, they have offered virtually no arguments regarding resale: their economist reports do not discuss resale; they have provided no analysis of the relevant market; they have provided no information regarding the geographic areas in which competitive alternatives are available (other than to rely on Form 477 broadband deployment data that is irrelevant and unreliable); and the information and arguments regarding the extent to which competitive carriers rely on resale have been thoroughly refuted. Given the absence of any record evidence to support forbearance, it would be arbitrary and capricious for the agency to grant forbearance for avoided-cost resale as it applies to traditional TDM service sold to business and government customers.

Nevertheless, in the event that the Commission were to grant such forbearance, the Joint Parties request that, in doing so, it account for the terms and pending negotiations of downstream retail contracts. First, a large number of the Joint Parties' service contracts with business customers are three years in duration, and, in the case of some contracts for large volumes of service, give the customer the right to extend the term by one or two 12-month time periods ("option years"). The prices for traditional TDM service cannot be increased during the term of the contracts, including during the option years. In addition, the Joint Parties have been actively marketing such traditional TDM service. In some cases such marketing consists of offering the three-year contract term with fixed prices to new customers. In other cases such marketing consists of efforts to renew contracts with existing customers on the same terms and conditions. These discussions are often extremely complex and slow, frequently lasting many months or even more than a year. This is especially true with very large customers that have thousands of locations in dozens of ILEC territories. Customers expect that their service provider will remain true to its offer of service in the future. If the service provider has promised to provide service to a new or existing customer under a future contract of three years in duration at fixed prices, it will suffer substantial reputational harm if it fails to meet that commitment.

However, forbearance would make it highly unprofitable for a competitive provider to meet its obligations under existing contracts and promises of future service arrangements. As explained, the Joint Parties provide traditional TDM service by purchasing that service at wholesale from ILECs under interconnection agreements directly governed by Section 251(c)(4) and under commercial wholesale agreements whose prices are strongly influenced by the availability of Section 251(c)(4). Virtually all interconnection agreements contain change of law provisions that would allow ILECs to reduce the resale discount or eliminate it entirely if forbearance were granted. While the prices in

Marlene H. Dortch
June 14, 2019
Page 5

commercial wholesale agreements do not contain similar provisions, a number of the Joint Parties' commercial wholesale agreements will expire within the next calendar year. In the absence of the disciplining effect of avoided-cost resale, the ILECs are likely to substantially increase the prices for traditional TDM service included in commercial wholesale agreements upon renewal. Both forms of price increases threaten to force the Joint Parties to serve business customers under existing and promised retail contracts at a significant loss. In order to address this concern, it would be appropriate to postpone the effective date of forbearance from Section 251(c)(4) avoided-cost resale for traditional TDM service sold to business customers by five years from the grant of forbearance. This delay would give the competitors the time to adjust their marketing and standard contract terms to the post-forbearance environment, assuming offers of service are even viable in such an environment.

If, as seems entirely possible, resale competitors are forced to withdraw from some or all parts of the traditional TDM business service market, a transition period would give business customers the time necessary to adjust to the new environment. A key value provided by resale competitors is that they enable business customers with locations in many ILEC territories to purchase traditional TDM service from a single service provider. If resale competitors are unable to perform this function, business customers would need to enter into contracts directly with the ILECs. For many large business customers, this could mean that they must do so for more than [BEGIN HCI] [END HCI] ILECs.¹⁶ This is likely to be an extremely time-consuming process. Even if some resale competitors remain in the market while others exit, this would require that many business customers negotiate large and complex service contracts with new resale service providers, also a long and difficult process. All of these factors demonstrate that, from the business end user perspective, five years is an appropriate transition period.

Second, federal government customers present an even more difficult situation. The Enterprise Infrastructure Services ("EIS") contract terms govern most of the services, including traditional TDM service, that firms like Granite and MetTel sell to federal government customers. Federal government agencies continue to purchase a large volume of traditional TDM service for critical infrastructure and functionalities, and many federal agencies are unlikely to transition from traditional TDM service to VoIP in the near future.¹⁷ The EIS contract consists of an initial five-year term, and it gives the

¹⁶ See Antonellis Decl. ¶ 7 (explaining that [BEGIN HCI] [END HCI] of Granite's customers have service locations in the territories of [BEGIN HCI] [END HCI] ILECs).

¹⁷ See, e.g., Letter from Thomas Jones, et al., Counsel for Granite Telecommunications, LLC, Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications, and Access One, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 18-141, at 4-9 (Mar. 14, 2019) (describing the regulatory and practical reasons why numerous federal agencies, including the Federal Aviation Administration, Federal Bureau of Investigation, and Department of Defense currently demand traditional TDM service and will do so for the foreseeable future); Letter from David J. Redl, Assistant Secretary for Communications and Information, NTIA, to Ajit Pai, Chairman, FCC, WC Docket No. 17-84, at 2 (July 19, 2018) (describing the challenges the federal government faces in the

Marlene H. Dortch
June 14, 2019
Page 6

government customer (which is the General Services Administration or “GSA,” acting on behalf of government customers) the right to extend the contract by two successive five-year terms. Rates that service providers must charge government customers are essentially locked during the initial five-year term.¹⁸ While there may be opportunity for a service provider to seek to increase prices during the extension terms of the contract, GSA has the sole discretion as to whether to allow price increases, the increases are capped at 10 percent per five-year extension.¹⁹ Thus, in the case of government customers, increases in ILEC wholesale prices made possible by forbearance could force the Joint Parties to operate at a loss for up to fifteen years. This extended commitment, by itself, justifies denial of forbearance for government customers. However, if the Commission nevertheless grants forbearance even for government customers, it should give service providers enough time to phase in price increases that could perhaps be acceptable to the government during the initial five-year extension. In order to achieve this, it would be appropriate to postpone the effective date of forbearance from Section 251(c)(4) avoided-cost resale for traditional TDM service sold to federal and state government customers by seven years from the grant of forbearance.

Please contact me with questions or concerns about the foregoing.

Respectfully submitted,

/s/ Thomas Jones

Thomas Jones

*Counsel for Granite Telecommunications, LLC,
Manhattan Telecommunications Corporation d/b/a
Metropolitan Telecommunications, and Access One, Inc.*

cc: Terri Natoli
Michele Berlove

transition to IP-based services, particularly in areas where service providers lack competitive pressure); Reply Comments of Granite, MetTel, and AccessOne, WC Docket No. 18-41, at 4-9 (May 28, 2019) (quantifying federal government agencies’ current and future demand for traditional TDM service).

¹⁸ See General Services Administration, *Enterprise Infrastructure Solutions (EIS) Request for Proposals, Section H Special Contract Requirements*, § H.19 (July 2017), http://www.granitenet.com/GetRedactedFile/EIS_Section_H_REDACTED.pdf.

¹⁹ See *id.*